IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl.Misc.No.12750-M of 2007

DATE OF DECISION: MARCH 13, 2007

Nirmal Singh

...PETITIONER

VERSUS

State of Punjab and others

...RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr. Ajay Tewari, Advocate,
for the petitioner.
Mr.N.S.Gill, AAG, Punjab.
Mr.P.S.Sekhon, Advodcate,
for respondent No.3.
Mr.Hemant Bassi, Standing Counsel
for U.T.Chandigarth.

...

Nirmal Singh, father of alleged Rupinder Kaur, has filed this petition under Section 482 Cr.P.C. for setting aside the order dated 8.2.2007 passed by the Additional Sessions Judge, Ad hoc, Patiala as well as the order dated 12.1.2007 passed by JMIC, Samana.

In this case, on the complaint of the petitioner, FIR No.242 dated 30.11.2006 was registered under Sections 363/366A/120-B IPC at P.S.Patran, on the allegation that the minor daughter of the petitioner, namely, Rupinder Kaur was kidnapped by Sukhdev Singh @ Sukha (respondent No.2), the son of respondent No.3. In the FIR, it was alleged that the age of his daughter is 17 years, as her date of birth is 20.8.1989.

During investigation of the said case, respondent No.2 was

arrested and Rupinder Kaur was taken into custody and produced before the Magistrate. Before the Magistrate, she had taken the stand that she was major and she was not willing to go with her parents as she apprehended danger to her life from her parents. She also stated that she has performed marriage with Sukhdev Singh @ Sukha accused, who was present in the Court. Since Sukhdev Singh was in custody and the girl was not willing to go with her parents, JMIC sent Rupinder Kaur to Nari Niketan as as per her School Leaving Certificate of Class Vth, she was only 17 years 3 months of age.

Against the said order, the petitioner filed a revision before the Additional Sessions Judge, Patiala by raising the contention that Rupinder Kaur is a minor and the custody of the minor should have been given to the father of the girl, who is the natural guardian and she should not be sent to Nari Niketan because she is not an accused. The said revision was allowed by Additional Sessions Judge, Patiala vide order dated December 23, 2006 and the order dated 6.12.2006 passed by JMIC, Samana was set aside and the matter was remitted to the Magistrate for fresh decision, while observing as under:-

> "....I am of the view that an aspect has lost sight by the trial court that Rupinder Kaur is not an accused and her custody in Nari Niketan, Jalandhar is nothing but curtailment of her personal liberty, which is not warranted by the Constitution of India particularly when the custody under the law has to be given to the lawful guardian, who may be either the parents or the husband. The desire of the minor is also to be kept in mind.

> Therefore, I find that keeping in view the changed circumstances, the impugned order is not sustainable and has to be set aside with a direction to the trial court to receive the claim of both the parties and entrust the custody of Rupinder Kaur to the lawful guardian, keeping in mind the desire of Rupinder Kaur. As such, the impugned order is set aside and the case is remanded back to the trial court with a direction that the trial court will receive the claim of both the parties and hold a summary enquiry on day to day basis keeping in mind that every day amounts to curtailment of personal liberty and right of movement of Rupinder Kaur. The trial court, if so desire, can summon Rupinder Kaur during the enquiry and the matter shall be disposed of expeditiously in accordance with law. Both the parties are directed to appear before the trial court on 4.1.2007at 10.00 a.m. The documents produced by the respondent can be returned to him for production before the trial court."

After the remand, JMIC, Samana vide order dated 12.1.2007 accpeted the claim of Sukhwinder Kaur (respondent No.3) for the custody of Rupinder Kaur and the Nari Niketan authorities were directed to hand over the custody of Rupinder Kaur in favour of Sukhwinder Kaur with a condition that she will be responsible for the safe custody of Rupinder Kaur till the time Sukhdev Singh, the alleged husband of Rupinder Kaur is released from custody or till she attains majority, whichever is earlier. While accepting the claim of Sukhwinder Kaur, JMIC has taken into

consideration the statement of Rupinder Kaur to the effect that she has performed marriage with Sukhdev Singh and she was not willing to go with her parents as she was apprehending threat to her life from them; Vth Class School Leaving Certificate of Rupinder Kaur, according to which, she is 17 years 5 months old; statement of Rupinder Kaur recorded under Section 164 Cr.P.C.; the fact that both Sukhdev Singh and Rupinder kaur filed Crl.Misc.No.74815-M of 2006 jointly in the High Court alleging that they performed marriage against the wishes of their parents and the photographs of the marriage as well as the decision of the Supreme Court in Smt.Lila Gupta v. Laxmi Narain and others, AIR 1978 SC 1351.

The petitioner filed a revision against the said order. The same was dismissed by the Additional Sessions Judge, Adhoc, Patiala, vide order dated 8.2.2007. Hence against those orders, the instant petition has been filed.

On March 7, 2007, Smt.Sukhwinder Kaur (respondent No.3) produced Rupinder Kaur in this court. During the talk in the Chamber with the parents of the girl and the boy ,and with Rupinder Kaur, she stated that she is major and in her School Leaving Certificate, her date of birth has been wrongly given. She also stated that she has performed marriage with Sukhdev Singh and she is not willing to go with her parents because of threat to her life. On that date, in the interest of justice, the ossification test of the girl was ordered to be conducted by the PGI, Chandigarh and she was sent for Nari Niketan.

The report of the Medical Superintendent, PGIMER, Chandigarh has been received today and the same is taken on record.

According to the said report, the girl is more than 17 years and less than 20 years of age.

Again today, I have asked the girl where she wants to go. She has again reiterated that she is major and her date of birth in the School Leaving Certificate is wrong and she has performed marriage with Sukhdev Singh. She further stated that she wants to go with her husband Sukhdev Singh, who is present in the Court.

After hearing the counsel for the parties and after taking into consideration the report of the Medical Superintendent, PGI, Chandigarh, the stand taken by Rupinder Kaur in the Court and the law laid down by the Division Bench of Delhi High Court in Ram Ladle Chaturvedi v. Commissioner of Police & Ors., 2006(1) RCR (Criminal) 653 and the Supreme Court in Smt.Lila Gupta's case (supra), I do not find any ground to interfere in the impugned orders. The petitioner in order to show that the girl was minor, is relying upon the School Leaving Certificate of Vth Class of Rupinder Kaur. No authentic proof of age, i.e. certificate from the Registrar, Births and Deaths, has been produced. The questions whether the girl is major or minor and whether she has performed valid marriage with Sukhdev Singh or not, are yet to be gone into and decided on the basis of the evidence led by the parties.

Keeping in view the categorical stand taken by the girl that she being major has performed marriage with Sukhdev Singh and she does not want to go with her parents, and in the aforesaid facts and circumstances of the case, this petition is dismissed. Rupinder Kaur, who has been brought in Court by the Nari Niketan authorities, is permitted to go forthwith with her

husband Sukhdev Singh, who is present in the Court and has been released from custody.

A copy of this order, duly attested by the Reader of this Court, be given to the Nari Niketan authorities.

Copy of this order be also given dasti the counsel for the parties on payment of usual charges.

March 13, 2007 (SATISH KUMAR MITTAL)
vkg JUDGE